making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) in that the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective not later than August 31, 1968. Shipments of such peaches are currently regulated pursuant to Peach Regulation 6 (33 F.R. 10388) and unless sooner terminated, will continue to be so regulated through September 28, 1968; determinations as to the need for, and extent of, continued regulation of such peach shipments must await the development of the crop and other available information. On the basis of other available information for regulation of peach shipments subsequent to August 31, 1968, in the manner herein provided it is necessary, in order to effectuate the declared policy of the act, to make this amendment effective as hereinafter set forth; information concerning the provisions of this amendment has been disseminated among handlers of such peaches and compliance with this amendment will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

Order. The provisions of paragraph (a) (1) (i) of § 919.307 (Peach Regulation 6; 33 F.R. 10388) are hereby amended to read as follows:

§ 919.307 Peach Regulation 6.

(a) *Order.* (1) * * *

(i) Any peaches of any variety which do not grade at least U.S. No. 1 grade;

* * * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated, August 27, 1968, to become effective August 31, 1968.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 68–10548; Filed, Aug. 29, 1968; 8:50 a.m.]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES AND OTHER OPERATIONS

[Amdt. 7]

PART 1464—TOBACCO

Subpart—Tobacco Loan Program

MISCELLANEOUS AMENDMENTS

The regulations issued by Commodity Credit Corporation, published in 31 F.R. 9679; 32 F.R. 10249, 11416, 14203; 33 F.R. 136, 910 and 9759, with respect to the tobacco price support loan program are herein amended as follows:

1. In § 1461.1756, paragraph (d) (2) and (3) is amended to provide price support on Flue-cured tobacco of the 1968 and subsequent crops which is security for a farm storage loan obtained pursuant to Part 1421 of this chapter and which is delivered directly to the association. The amended subparagraphs read as follows:

§ 1464.1756 Availability of price support.

* * * * *

(d) Price support to eligible producers will be made available on eligible tobacco in the following manner:

* * * * *

(2) *Upon direct delivery to the Association.* Eligible producers in nonauction market areas may deliver eligible tobacco to central receiving points designated by the appropriate association. Flue-cured producers who, after the close of all Flue-cured auction markets, including clean-up sales, have Flue-cured tobacco which is security for a farm storage loan obtained pursuant to Part 1421 of this chapter, may deliver such tobacco to the central receiving points designation by the appropriate association. After the tobacco has been graded by USDA inspectors, the producer will receive the price support advance directly from the association for any tobacco to be pledged as security for loans.

(3) *Period of price support.* Price support will be available to eligible producers on eligible tobacco only during each year's normal marketing season for each kind of tobacco for which support is provided. For the purpose of this subpart, the normal marketing season for Flue-cured tobacco delivered directly to the association will include the date on which the producer is directed, pursuant to Part 1421 of this chapter, to so deliver the tobacco. Such date will be soon after the close of all Flue-cured markets, including clean-up sales.

2. In § 1464.1758, paragraph (c) is amended to provide for collection of 1968 and subsequent crop Flue-cured tobacco farm storage loans by deductions from price support advances. The amended paragraph is as follows:

§ 1464.1758 Deductions from advances.

* * * * *

(c) If any producer of 1968 and subsequent crops of Flue-cured tobacco is indebted to the United States for a farm storage loan obtained pursuant to Part 1421 of this chapter, the principal amount of such loan will be deducted from the price support advance paid the producer by the association and will be applied to repayment of the farm storage loan.

3. Section 1464.1763 is amended to include in the definition of eligible tobacco, Flue-cured tobacco which is delivered directly to the association. The amended section reads as follows:

§ 1464.1763 Eligible tobacco.

Eligible tobacco shall be United States and Puerto Rican Tobacco (as defined in the Agricultural Adjustment Act of 1938, as amended) which (a) is of a kind and crop for which price support is available; (b) if marketing quotas are in effect, has been properly identified in accordance with applicable tobacco Marketing Quota Regulations by (1) a Within Quota Marketing Card, if other than Flue-cured or burley tobacco, or (2) a Marketing Card which does not bear the words "No Price Support," if Flue-cured or burley tobacco; (c) if Flue-cured tobacco, (1) is offered for marketing on a Tobacco Sale Bill which is not marked "No Price Support", and is for a number of pounds which, when added to the pounds of Flue-cured tobacco previously marketed, does not exceed 110 percent of the applicable farm marketing quota, or (2) is delivered directly to the association and is a quantity which, when added to the previous marketings, does not exceed 110 percent of the applicable farm marketing quota; (d) has been delivered to the association by the producer, either directly or through an auction warehouse, prior to sale to any other person; (e) has been delivered to the association by the producer, either directly or through an auction warehouse, in lots identified by not more than one marketing card for each lot; (f) is in sound and merchantable condition; (g) was not produced on land owned by the Federal Government in violation of the provisions of a lease restricting the production of tobacco; and (h) has been graded by USDA official tobacco inspectors in a grade for which price support is available.

(Sec. 4, 62 Stat. 1070, as amended, sec. 5, 62 Stat. 1072, secs. 101, 106, 401, 403, 63 Stat. 1051, as amended, 1054, sec. 125, 70 Stat. 198, 74 Stat. 6; 7 U.S.C. 1441, 1445, 1421, 1423, 7 U.S.C. 1813, 15 U.S.C. 714b, 714c)

Effective date: Date of filing with Office of the Federal Register.

Signed at Washington, D.C., on August 26, 1968.

E. A. JAENKE,
Acting Executive Vice President, Commodity Credit Corporation.

[F.R. Doc. 68–10473; Filed, Aug. 29, 1968; 8:46 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 8563, Amdt. No. 25–18]

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

Fuel Jettisoning Systems

The purpose of this amendment to § 25.1001 of Part 25 of the Federal Aviation Regulations is to revise the criteria for fuel jettisoning systems on airplanes.

This action was issued as a notice of proposed rule making (Notice No. 67–51)

and published in the FEDERAL REGISTER on December 6, 1967 (32 F.R. 17487). The comments received in response to the notice are discussed hereinafter.

Several comments expressed concern about the relationship between an airplane's established landing distance and the corresponding runway length that would be required for landing at the airport of departure under the proposed regulation. The comments indicate that under certain conditions, the runway length for landing at the airport of departure might be more critical than the landing and approach climb requirements. In this connection, it was recommended that specific engineering data be examined for all anticipated cases where weight to meet the go-around climb gradients and weight to land and stop may be in conflict. One of the commentators stated that if the weight specified in the Notice is the most restrictive for all cases and can be proved by test-substantiated engineering data, then its concern is alleviated. This matter was considered at the time the notice was being formulated. A review of the type certification test data concerning relative takeoff and landing distances of four representative types of airplanes that varied in size and in the number and type of engines, indicated that for the critical range of takeoff weights, the runway required for takeoff would always provide an adequate margin for landings at the airport of departure. Moreover, it was shown that the runway length margin for landing increases with increases in the ratio of the takeoff to landing weight.

In a related comment the opinion was also expressed that under certain conditions, maximum brake energy capacity may be more limiting than the landing and approach climb requirement. It was suggested that the proposed rule should include language to the effect that the aircraft must be capable of stopping within the confines of the available runway at the airport of departure. The FAA does not consider that such a revision to the proposal is necessary. There has been no adverse service experience with airplanes certificated under Part 25 involved in overweight landings. Moreover, the accelerate-stop demonstration used in showing compliance with the takeoff performance requirements at takeoff weight also provides assurance of the ability to stop an airplane with takeoff weight within the confines of the available runway at the airport of departure.

A comment was also received recommending that the proposed rule be changed to permit compliance with the performance requirements specified in paragraph (c) of the proposal to be shown at a weight that is 95 percent of the takeoff weight as an alternative to the proposed requirement. The commentator stated that this is appropriate since at least two transport airplanes have been granted FAA exemptions based on meeting the performance requirements at 95 percent of the takeoff weight. The commentator further advised that, in some cases, the 15-minute fuel burnoff as provided in the proposal could amount to a weight reduction greater than 5 percent of the maximum takeoff weight if certain emergency procedures were established by the applicant for the 15-minute go-around. In this connection, the commentator also recommended that the regulation provide that the 15-minute takeoff, go-around and landing operation be conducted in accordance with emergency procedures (such as gear and flaps down and the use of augmented thrust) for operation in service.

Under the proposal, compliance with the climb requirements specified in paragraph (c) would have to be determined at a weight equivalent to the maximum takeoff weight less the weight of the fuel that would be consumed during a 15-minute flight in which the airplane is involved in a takeoff, go-around, and landing at the airport of departure. In the Notice, it was proposed that this flight be conducted in accordance with the procedures established by the applicant for operation in service, in other words, the procedures (and the resulting airplane configurations) used by the manufacturer in meeting the present performance requirements under Part 25 for takeoff and go-around operation (i.e., takeoff, balked landing, and missed approaches). In this connection, one of the commentators stated that the airplane configurations assumed in establishing the weight at the end of 15 minutes (from the point of view of aerodynamic drag) should be compatible with the approach and landing configuration assumed for compliance with the climb requirements. The FAA agrees that it would not be appropriate in the interest of safety to permit the use of special procedures designed to provide the maximum burn-off rate for the sole purpose of meeting this requirement. As indicated above, it is those procedures used by the applicant in meeting the performance requirements of Part 25 that must be used in conducting the takeoff, go-around, and landing. The proposal has been revised to make this clear. This does not mean, however, that the procedures established in accordance with the current performance requirements of Part 25 are not emergency procedures, and such procedures might, in fact, result in the configurations suggested by the commentator, provided the airplane meets the appropriate climb requirements for each stage of flight.

With respect to the commentators' recommendation concerning the incorporation into the regulation of an alternative means for determining the weight at which the climb performance requirements must be met, the FAA does not consider that such a change is appropriate. The proposal was intended to provide a regulation that can be uniformly applied on a rational rather than an arbitrary basis. Moreover, the recommendation does not provide an acceptable alternative since the burn-off rate for current aircraft designs is such that a weight established on the basis of fuel burn-off during a 15-minute go-around using the procedures for operation in service would generally be higher than the weight based on the arbitrary figure of 95 percent of the takeoff weight. Thus, incorporation of the commentators' recommendation would result in the general application of the 95 percent criteria. While previous FAA exemptions from the current requirement of § 25.1001 were based on the fact that the aircraft had been shown to meet the approach and landing climb requirements of Part 25 at a weight equal to 95 percent of the takeoff weight, these exemptions were all limited to aircraft in which the ratio of takeoff weight to landing weight was not more than 115 percent. The commentator did not recommend the incorporation of the 115 percent limitation and the FAA does not consider that such a limitation would be appropriate in a rule of general applicability.

Another comment inferred that the 15-minute period provided for in the proposal must be assumed to start at the maximum (structural) certificated weight. The commentator also assumed that for high altitude and temperature, it is permissible to take credit for the fact that the maximum takeoff weight may be limited by these conditions and suggested that the rule be clarified. The term "maximum takeoff weight" used in the rule refers to maximum weight as specified in § 25.25. This is the highest weight at which compliance with each applicable requirement of Part 25 is shown, including any limitations necessary to meet the performance requirements at altitude or at high temperatures. As stated in § 25.25 the term "design maximum weight" is the highest weight at which compliance is shown with the structural requirement. The commentator is, however, correct in his assumption that for the high altitude and temperature, the maximum take-off weight is the weight as limited by the applicable altitude and temperature at the airport of departure. This is clearly indicated in the proposal.

One of the comments recommended that the rule should be changed to require that the applicable approach and landing climb requirements be met at the maximum weight. This comment, however, does not take into consideration the fact that fuel will be consumed during the necessary takeoff, go-around, and landing at the airport of departure and, therefore, represents an unrealistic requirement.

Another commentator thought that turbine powered airplanes should be exempt from the fueling jettisoning requirement because they comply with more stringent performance regulations and because rationalization of en route terrain clearance and drift down regulations result in greater en route protection. The commentator also pointed out that while the airplane may be landing at maximum weight, it obviously has a reasonable climb capability because the airplane has already satisfied the takeoff climb regulations, and that fuel jettisoning systems impair safety if they malfunction.

This proposal takes into consideration the fact that there are high performance airplanes for which a fuel-jettisoning system may not be required. However, the FAA is not aware that all turbine engine powered airplanes have the required performance capability and the performance capability listed by the commentator does not establish a basis for exempting such airplanes.

There were comments questioning whether or not the proposed regulations could be applied to currently certificated airplanes. In response to these comments, it should be pointed out that while all operators may take advantage of the regulation, since the regulation would be the basis for increasing the takeoff weight of an airplane, they must apply to the FAA under Part 21 for approval of a change to the maximum takeoff weight.

Another comment suggestd that the rule should specifically require that the fuel jettisoning system be constructed to meet the requirements of the regulation. In this connection, it was suggested that the rule should specifically refer to the "design and construction" of the jettisoning system. The FAA does not consider that such a change is necessary since proper construction is assured through the requirement that the fuel jettisoning system must be demonstrated by flight tests. However, upon further consideration, the FAA does believe that the proposal should be changed to avoid any implication that the FAA proposes design limits on the performance of the fuel jettisoning system. The final rule, therefore, incorporates the language of the present regulation and requires that the jettisoning system must be "able" to jettison the specified amounts of fuel rather than that it be designed so that it will jettison the specified amounts of fuel.

Finally, in the light of some of the comments received in response to Notice 67–51, it should be made clear that under the current regulations an investigation of the flight characteristics of an airplane would be required at the weight existing at the end of the specified 15-minute go-around. Section 25.21 provides that the flight requirements of Part 25 must be met at each combination of weight and center of gravity within the range of loading conditions for which certification is requested. The weight existing at the end of the 15-minute go-around operation referred to in this regulation will be within the range of loading conditions for which certification is requested. In addition, § 25.143 specifically requires that an airplane must be safely controllable and maneuverable during takeoff, climb, level flight, descent, and landing. Moreover, it must be determined that it is possible to make a smooth transition from one flight condition to another without exceptional piloting skill, alertness or strength under any probable operating condition.

A nonsubstantive change has been made in § 25.343(a) to correct the reference to paragraph (c) of § 25.1001 since former paragraph (c) is now incorporated in paragraphs (h) and (i).

In consideration of the foregoing, §§ 25.343 and 25.1001 of Part 25 of the Federal Aviation Regulations are amended effective September 29, 1968, as follows:

1. Section 25.343(a) is amended by striking out the reference "§ 25.1001(c)" and inserting the reference "§ 25.1001 (h) and (i), as applicable," in place thereof.

2. Section 25.1001 is amended by deleting present paragraphs (a) through (d), by redesignating present paragraphs (e), (f), and (g), as paragraphs (j), (k), and (l), respectively, and by adding new paragraphs (a) through (i) to read as follows:

§ 25.1001 Fuel jettisoning system.

(a) A reciprocating engine powered airplane must have a fuel jettisoning system installed that meets the requirements of this section unless it is shown that the airplane meets the climb requirements of §§ 25.65(b) and 25.67(e) at the weight specified in paragraph (c) of this section.

(b) A turbine engine powered airplane must have a fuel jettisoning system installed that meets the requirements of this section unless it is shown that the airplane meets the climb requirements of §§ 25.119 and 25.121(d) at the weight specified in paragraph (c) of this section.

(c) Compliance with the climb performance requirements of paragraph (a) or (b) of this section must be shown at a weight equal to the maximum takeoff weight less the actual or computed weight of the fuel that would be consumed by the engines during a 15-minute flight in which the airplane is involved in a takeoff, go-around, and landing at the airport of departure, with the airplane's configuration, speed, power, and thrust the same as that used in meeting the applicable takeoff, approach and landing climb performance requirements of this part.

(d) For a reciprocating engine powered airplane, the fuel jettisoning system must be able to jettison enough fuel within 15 minutes to bring the weight specified in paragraph (c) of this section down to the weight at which the airplane will meet the climb requirements of §§ 25.65(b) and 25.67(e) assuming that the fuel is jettisoned under the condition found least favorable during the flight test prescribed in paragraph (f) of this section.

(e) For a turbine engine powered airplane, the fuel jettisoning system must be able to jettison enough fuel within 15 minutes to bring the weight specified in paragraph (c) of this section down to the weight at which the airplane will meet the climb requirements of §§ 25.119 and 25.121(d) assuming that the fuel is jettisoned under the condition found least favorable during the flight test prescribed in paragraph (f) of this section.

(f) Fuel jettisoning must be demonstrated beginning at maximum takeoff weight with flaps and landing gear up and in—

(1) A power-off glide at $1.4V_{s_1}$;

(2) A climb at the one-engine inoperative best rate-of-climb speed, with the critical engine inoperative and the remaining engines at maximum continuous power; and

(3) Level flight at $1.4V_{s_1}$, if the results of the tests in the condition specified in subparagraphs (1) and (2) of this paragraph show that this condition could be critical.

(g) During the flight tests prescribed in paragraph (f) of this section, it must be shown that—

(1) The fuel jettisoning system and its operation are free from fire hazard;

(2) The fuel discharges clear of any part of the airplane;

(3) Fuel or fumes do not enter any parts of the airplane;

(4) The jettisoning operation does not adversely affect the controllability of the airplane.

(h) For reciprocating engine powered airplanes, means must be provided to prevent jettisoning the fuel in the tanks used for takeoff and landing below the level allowing 45 minutes flight at 75 percent maximum continuous power. However, if there is an auxiliary control independent of the main jettisoning control, the system may be designed to jettison the remaining fuel by means of the auxiliary jettisoning control.

(i) For turbine engine powered airplanes, means must be provided to prevent jettisoning the fuel in the tanks used for takeoff and landing below the level allowing climb from sea level to 10,000 feet and thereafter allowing 45 minutes cruise at a speed for maximum range. However, if there is an auxiliary control independent of the main jettisoning control, the system may be designed to jettison the remaining fuel by means of the auxiliary jettisoning control.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Washington, D.C., on August 23, 1968.

D. D. THOMAS,
Acting Administrator.

[F.R. Doc. 68-10513; Filed, Aug. 29, 1968; 8:49 a.m.]

[Docket No. 68-WE-17-AD, Amdt. 39-645]

PART 39—AIRWORTHINESS DIRECTIVES

Boeing Model 727 Series Airplanes

Amendment 39-625 (33 F.R. 10644), AD 68-15-4, requires the installation of a flame barrier on the lower inboard side of the R.H. rack support assembly adjacent to the battery charger on Boeing Model 727 Series Airplanes.

After issuing AD 68-15-4, the Federal Aviation Administration determined that it would be in the public interest to increase the compliance time of this AD. Therefore, the AD is being amended to provide a compliance time of 1,200 hours time in service after the effective date of this AD.

Since this amendment relieves a restriction, and imposes no additional

burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective immediately upon publication in the FEDERAL REGISTER.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations, Amendment 39-625 (33 F.R. 10644) AD 68-15-4 is amended as follows:

Amend the compliance requirement to read:

Compliance required within the next 1,200 hours time in service after the effective date of this AD, unless already accomplished.

The amendment becomes effective on September 5, 1968.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958; 49 U.S.C. 1354(a), 1421, 1423)

Issued in Los Angeles, Calif., on August 22, 1968.

LEE E. WARREN,
Acting Regional Director,
FAA Western Region.

[F.R. Doc. 68-10512; Filed, Aug. 29, 1968; 8:49 a.m.]

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER C—AGE DISCRIMINATION IN EMPLOYMENT

PART 860—INTERPRETATIONS

Miscellaneous Amendments

Pursuant to the Age Discrimination in Employment Act of 1967 (81 Stat. 602; 29 U.S.C. 620) and Secretary's Orders No. 10-68 (33 F.R. 9729) and No. 11-68 (33 F.R. 9690), 29 CFR Part 860 is hereby amended by adding thereto new §§ 860.50, 860.95, 860.105, and 860.110, to read as set forth below.

As these new sections contain only interpretative rules and are not substantive, subsections (b), (c), and (d) of 5 U.S.C. 553 do not apply. I do not believe that either general notice of proposed rule making and public participation therein or delay in effective date would serve a useful purpose here. Accordingly, these rules shall be effective immediately.

1. The new § 860.50 reads as follows:

§ 860.50 "Compensation, terms, conditions, or privileges of employment * * *".

(a) Section 4(a)(1) of the Act specifies that it is unlawful for an employer "to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;"

(b) The term "compensation" includes all types and methods of remuneration paid to or on behalf of or received by an employee for his employment.

(c) The phrase "terms, conditions, or privileges of employment" encompasses a wide and varied range of job-related factors including, but not limited to, job security, advancement, status, and benefits. The following are examples of some of the more common terms, conditions, or privileges of employment: The many and varied employee advantages generally regarded as being within the phrase "fringe benefits," promotion, demotion or other disciplinary action, hours of work (including overtime), leave policy (including sick leave, vacation, holidays), career development programs, and seniority or merit systems (which govern such conditions as transfer, assignment, job retention, layoff and recall). An employer will be deemed to have violated the Act if he discriminates against any individual within its protection because of age with respect to any terms, conditions, or privileges of employment, such as the above, unless a statutory exception applies.

2. The new § 860.95 reads as follows:

§ 860.95 Job applications.

The term "job applications", within the meaning of the recordkeeping regulations under the Act (Part 850 of this chapter), refers to all inquiries about employment or applications for employment or promotion including, but not limited to, résumés or other summaries of the applicant's background. It relates not only to preemployment inquiries but to inquiries by employees concerning terms, conditions, or privileges of employment as specified in section 4 of the statute. As in the case with help wanted notices or advertisements (see § 860.92), a request on the part of an employer, employment agency, or labor organization for information such as "Date of Birth" or "State Age" on an employment application form is not, in itself, a violation of the Age Discrimination in Employment Act of 1967. But because the request that an applicant state his age may tend to deter older applicants or otherwise indicate a discrimination based on age, employment application forms which request such information in the above, or any similar phrase, will be closely scrutinized to assure that the request is for a permissible purpose and not for purposes proscribed by the statute. That the purpose is not one proscribed by the statute should be made known to the applicant, as by a reference on the application form to the statutory prohibition in language to the following effect: "The Age Discrimination in Employment Act of 1967 prohibits discrimination on the basis of age with respect to individuals who are at least 40 but less than 65 years of age."

3. The new § 860.105 reads as follows:

§ 860.105 Bona fide seniority systems.

Section 4(f)(2) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization * * * to observe the terms of a bona fide seniority system * * * which is not a subterfuge to evade the purposes of this Act * * *."

(a) Though a seniority system may be qualified by such factors as merit, capacity, or ability, any bona fide seniority system must be based on length of service as the primary criterion for the equitable allocation of available employment opportunities and prerogatives among younger and older workers. In this regard it should be noted that a bona fide seniority system may operate, for example, on an occupational, departmental, plant, or company wide unit basis.

(b) Seniority systems not only distinguish between employees on the basis of their length of service, they normally afford greater rights to those who have the longer service. Therefore, adoption of a purported seniority system which gives those with longer service lesser rights, and results in discharge or less favored treatment to those within the protection of the Act, may, depending upon the circumstances, be a "subterfuge to evade the purposes" of the Act. Furthermore, a seniority system which has the effect of perpetuating discrimination which may have existed on the basis of age prior to the effective date of the Act will not be recognized as "bona fide."

(c) Unless the essential terms and conditions of an alleged seniority system have been communicated to the affected employees and can be shown to be applied uniformly to all of those affected, regardless of age, it will also be regarded as lacking the necessary bona fides to qualify for the exception.

(d) It should be noted that seniority systems which segregate, classify, or otherwise discriminate against individuals on the basis of race, color, religion, sex, or national origin, are prohibited under Title VII of the Civil Rights Act of 1964, where that Act otherwise applies. Neither will such systems be regarded as "bona fide" within the meaning of section 4(f)(2) of the Age Discrimination in Employment Act of 1967.

4. The new § 860.110 reads as follows:

§ 860.110 Involuntary retirement before age 65.

Section 4(f)(2) of the Act provides that "It shall not be unlawful for an employer, employment agency, or labor organization * * * to observe the terms of * * * any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this Act, except that no such employee benefit plan shall excuse the failure to hire any individual * * *." Thus, the Act authorizes involuntary retirement irrespective of age, provided that such retirement is pursuant to the terms of a retirement or pension plan meeting the requirements of section 4(f)(2). It should, however, be noted in this connection that section 5 of the Act directs the Secretary of Labor to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate